

01 February 2019

**Representation to the CWaC Local Plan (Part Two) Main Modifications Consultation**

**To: Main modification policies map change – Amendment 4 (Map Change 163)**

**Submitted on behalf of Mr S Dakin, Mrs S Dakin-Evans and Mr G Evans**

*Firstly, it is our understanding that a separate representation has been put forward on behalf of Orchard House Property Developments Limited, which also acts a 'letter before action (LBA)'. With reference to this, we are of the opinion that the basis of the representation made and the requested action that the Council is expected to take and the information required is equally applicable to the site that is the subject of the representation put forward on behalf of Mr S Dakin, Mrs S Dakin-Evans and Mr G Evans (this representation) and we request equal consideration against that separate representation and a response to the same accordingly.*

Independently from the above referenced representation, this representation is made on behalf of Mr S Dakin, Mrs S Dakin-Evans and Mr G Evans, specifically in respect of proposed main modification policies map change – Amendment 4 (Map Change 163) in respect of the Malpas settlement boundary and the proposal to exclude land at The Sycamores, Old Hall Street.

## 1.0 Executive Summary:

- 1.1 This representation is to **object** to the proposed main modification policies map change – **Amendment 4** (Map Change 163) in respect of the Malpas settlement boundary and the proposal to exclude land at The Sycamores, Old Hall Street. Settlement boundaries for Key Service Centres, as identified on the proposals map.
- 1.2 For clarification, we request that proposed Amendment 4 is not taken forward and land at The Sycamores, Old Hall Street, Malpas is included in the settlement boundary for Malpas, as per the delineation put forward in the Local Plan (Part Two) Land Allocations and Detailed Policies – Submission Policies Map (March 2018). Refer **Appendix 1**.
- 1.3 Although the detailed explanations provided below refer primarily to Amendment 4, for which the objectors have direct knowledge, in most cases exactly the same principles apply to Amendment 3 (Land opposite West End Cottage, Church Street) within Map Change 163 so that those amendments are similarly unjustified and should not be made.
- 1.4 The objection is based upon the following reasons:
  1. The proposed restrictions are procedurally incorrect; they contravene town and country planning regulations and the procedural guidance in the examination of local plans.
  2. The proposed restrictions are not justified in the context of being required in order to make the Plan sound and/or legally compliant. It is in fact to the contrary and it is submitted that the implementation of the proposed restrictions would adversely impact the soundness of the plan.
  3. The reduction in land available for development would limit the ability of developers to bring forward good quality sustainable housing on this windfall development site.
  4. The proposed restrictions are in contradiction to the National Planning Policy Framework (NPPF), as brought into effect by the government in 2018.
  5. The proposed redrafting of the policies map represents an abuse of the final Examination stage of the adoption of the Local Plan to retrospectively re-open consultation on that map.
  6. The Local Planning Authority's (LPA's) explanation for these boundary

changes in its submission to the Inspector was to 'correct drafting errors'; that explanation is not acceptable; the LPA had a duty to submit a sound map and there is good evidence that they did that job well; no errors were made so that no corrections are needed.

7. The proposed restrictions coincide with sites where sustainable and small scale planning applications have been submitted in good faith on the strength of the published detailed policies map put forward as the formal Submission document. Rather than correcting drafting errors, a more credible explanation is that these proposed changes are motivated by a desire to avoid granting planning approvals on those applications.
- 1.5 Any one of the above reasons alone is justification to dismiss the proposed changes, as a body they are incontrovertible. Further explanations of each of the above points is provided in the paragraphs below, primarily in reference to the site that is subject to Amendment 4, land at The Sycamores.
- 1.6 The LPA should recognise that if it were to make the amendments proposed it would be exposed to the risk of legal challenge by those adversely affected by the proposed restrictions; be it a civil case for loss or as a Judicial Review.

## **2.0 Procedurally Incorrect:**

- 2.1 The Council's own document, Cheshire West and Chester Local Plan (Part Two) Amendments to the Policies Map Changes, states the following:

*'the policies map is not defined in statute as a development plan document and so the Inspector does not have the power to recommend main modifications to it. However, a number of the published main modifications to the Local Plan (Part Two) policies require further corresponding changes to be made to the policies map. The Council has considered this and proposes the amendments set out in this document, which details the amendments to the policies map changes, from that as set out in the Local Plan (Part Two) Land Allocations and Detailed Policies Submission Policies map changes (March 2018).*

- 2.2 It is clear that the above statement is not correct in the context of the proposed Amendment 4 to Map Change 163 in that none of the published main modifications to the Local Plan (Part Two) have any direct association with or bearing on the delineation of the Malpas settlement boundary. It is further submitted that there is no evidence to the effect that the Inspector concluded that the proposed restriction was necessary in order to make the Plan sound and/or legally compliant. Accordingly it follows that the Council have no power to make the proposed restriction (amendment 4 to the map change 163) in the absence of a recommended modification that makes that necessary.
- 2.3 The Local Plan Part Two has been a work in progress for over four years and has been the subject of a series of consultation stages and revisions over the course of that time. The policies maps have been in the public domain and open to representation since the Publication Draft stage.
- 2.4 It is questioned why the LPA did not put forward the now suggested settlement boundary alterations in the Submission document (March 2018), which would have been the correct forum for validation through the Examination.
- 2.5 A Policies Map Changes document (March 2018) was put forward as part of the Submission Plan. At the very least the Council should have prepared an addendum following the Regulation 19 consultation. The Inspectorate's Procedural Practice document makes it clear that the plan that is published for consultation should be the plan that the LPA intends to submit under Regulation 22 to the Planning Inspectorate. If the LPA wishes to make any changes to the plan following the Regulation 19 consultation, these changes should be prepared as an addendum to the plan. The addendum should be

subject to further consultation and, if necessary, to sustainability appraisal before submission if it is to form part of the plan to be examined.

- 2.6 The PCPA specifically provides that a LPA must not submit the plan unless it considers the document is ready for examination. The Inspector will take the published plan (and if relevant, the addendum submitted with the plan to address matters arising from the public consultation on the plan at regulation 19 stage) as the final word of the LPA on the plan. Therefore, **there is a very strong expectation that further LPA-led changes to the plan will not be necessary** and this is a key premise of delivering an efficient examination timetable. **Provision for changes after submission of the plan is to cater for the unexpected.** It is not intended to allow the LPA to complete or finalise the preparation of the plan. There is no evidence that these changes are to deal with the unexpected, so the proposed amendments are procedurally incorrect, and should not be permitted.

### 3.0 Adverse impact on the soundness of the plan:

- 3.1 The proposed restrictions are not justified in the context of being required in order to make the Plan sound and/or legally compliant. It is in fact to the contrary and it is submitted that the implementation of the proposed restrictions would adversely impact the soundness of the plan.
- 3.2 The proposed amendments are to shrink the settlement boundary to limit development opportunities by excluding land that is included in the detailed policies map as already submitted for examination. Referencing the four tests of soundness, including the land that is now proposed to be excluded would not compromise these tests of soundness:
1. Inclusion of the land does not compromise the Plan's overarching housing strategy and is consistent with achieving sustainable development.
  2. Inclusion of the land is justified, based on proportionate evidence.
  3. Inclusion of the land does not compromise the effectiveness of the Plan, with particular reference to delivering its overarching housing strategy.
  4. Inclusion of the land enables the delivery of sustainable development in accordance with the policies of the NPPF.
- 3.3 Rather, the proposal to exclude the land would diminish soundness because it is at odds with the overarching housing strategy:
1. The Council's reason for suggesting that this change is needed is based on the quantity of houses being developed in the Malpas Key Service Centre – a total of 349 (**which is questioned and not all sites are guaranteed of coming forward as committed sites**) compared to the 200 dwellings stated in Local Plan (Part 1) STRAT 8. However, STRAT 8 sets out 200 as the **minimum** number, it is not a maximum or target number, so the proposed change cannot be justified by reference to STRAT 8, additional small windfall developments, particularly those in sustainable locations are consistent with and support STRAT 8. Redrawing the line to exclude such sites is therefore inconsistent with the policy.
  2. The inspector's report on the Local Plan part one included one statement and one amendment regarding provision of housing that are relevant:
    - i. In para' 136 of the report the Inspector says that "I consider that focusing of development in the Rural Area on Key Service Centres is an appropriate strategy", i.e. he thought that new dwellings should be focused on KSCs like Malpas not on LSCs, and importantly ...
    - ii. In para' 141 "References to the figures for housing in the Key Service

Centres being treated as maxima would result in a lack of flexibility. Main Modification MM7 would address these concerns and also make it clear that the figure for new dwellings in the Rural Area overall is regarded as a minimum.” Looking at MM7 the change it implemented was to say “... within the rural area provision will be made for at least ~~in the region of~~ 4,200 new dwellings ...”. So the Inspector was emphasizing that the 200 dwellings stated for the KSC of Malpas should only be a **minimum**, and should not be treated as a maximum or a target.

- 3.4 The Council’s position on the permitted unit numbers in Malpas is brought into question. Overall, since the adoption of the Local Plan (Part One) January 2015 there have been approvals for a total of 324 new dwellings. However it is argued that of the 324 dwellings, at least 257 of those were approved prior to adoption of the plan i.e. prior to the adoption of the policy stating the minimum 200 dwellings should be accommodated in Malpas. An assessment of permissions in Malpas since January 2015 (date of adoption of Local Plan (Part One)) is included as **Appendix 2** to this representation. Note, St Joseph’s college application was also started, with parts of it being approved as far back as 2010.
- 3.5 The assessment given in **Appendix 2** also highlights that consented sites do not guarantee deliverability. This is highlighted by the Chester Road site for 41 units, which was consented January 2014, was the subject of S106 negotiation for 2 and half years and as yet, some 5-years post resolution to grant, shows no sign of coming forward.
- 3.6 The proposed restriction of the settlement boundary restricts this need to focus development in KSCs and to provide for flexibility across the authority’s area; it therefore diminishes the plan’s soundness by being at odds with the overarching housing policy.

#### **4.0 Restricting Sustainable Development and not meeting the housing need:**

- 4.1 The land that the LPA proposes to exclude in Amendment 4 is within the title (and curtilage) of Parbutts House, a neighbouring property to The Sycamores. There is currently an undetermined planning application for bungalows on approximately 50% of that land. The application has come forward as a result of a number of enquiries being made to the owners of the property regarding the lack of supply of bungalows in the settlement and the limited opportunities presenting themselves in terms of sites with the benefit of planning permission. The application that has been made is a comprehensive development in conjunction with the neighbouring property called The Sycamores.
- 4.2 As such, the land represents an appropriate windfall opportunity, which, tested through the application process, is proven to be suitable for development from a development management perspective and would bring much needed bungalows (most likely 2 in total) forward in a very sustainable location.
- 4.3 The LPA has stated in the proposed amendment to the Inspector that there is no 'strategic requirement' for allocations in Malpas because numbers approved are above the minimum target of 200; however within that approved total there are ZERO bungalows. As such, the site would bring forward a property type that is in great demand in such localities. Of the 160 built units in Malpas, not a single one has been a bungalow.
- 4.4 The need for retirement properties, most commonly bungalows, is strongly referenced in the Malpas NDP:

Reference- point 2 of para 2.7 (page 10).

**2011 Census data indicates that the number of people aged 50 years or older in Malpas Parish is proportionally higher than the national average.** In Malpas Parish there are 51.7% (865) of people over 50 years old or older compared to 34.4% nationally. The number of working age adults aged 16 to 64 was 54.3% in Malpas Parish; proportionally less than the national level of 64.7%.

**Conclusion:** These figures indicate that the proportion of the population that are retired or likely to retire in the next ten or fifteen years will be proportionally significantly higher than the national average (2011 Census). Suitable homes need to be provided for this element of the population.

- 4.5 As such, the restriction to the boundary for Amendment 4 is directly contrary to the **identified need for housing in Malpas.**

## **5.0 In Contradiction to the National Planning Policy Framework (NPPF):**

### **5.1 The NPPF as issued in July 2018, states in paragraph 68:**

*“Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should:*

- a) identify, through the development plan and brownfield registers, land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved;*
- b) use tools such as area-wide design assessments and Local Development Orders to help bring small and medium sized sites forward;*
- c) support the development of windfall sites through their policies and decisions giving great weight to the benefits of using suitable sites within existing settlements for homes; and*
- d) work with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.”*

### **5.2 The restrictions proposed to the settlement boundary by Map Change 163 directly contradict this requirement by specifically seeking to exclude such sites.**

## **6.0 Abuse of the Final Examination to Allow Retrospective Consultation:**

- 6.1 The consultation period on the local plan part two and associated policies map closed on 29<sup>th</sup> January 2018. Extensive consultation of the public, Malpas Parish Council and local organisations was conducted prior to that date that resulted in the carefully drawn policies map as submitted by the LPA to the plan part two examination stage.
- 6.2 It is submitted that, in contrast to the sites that are the subject of proposed amendments 2 & 3 to Map Change 163, no objection was raised by any third party, including Malpas Parish Council, to the delineation of the settlement boundary that is now the subject of this representation at any stage of the Local Plan (Part Two) adoption process and associated consultation stages.
- 6.3 Planning applications were then submitted in good faith on the basis of that published policies map. Those planning applications were subject of objections by a handful of Malpas residents, in response to which the parish council lobbied for the applications to be refused. The applications were sound and clearly demonstrated sustainability, so that they would be expected to be approved. As such, if the proposed amendments to the policies map were to be implemented then that could clearly be interpreted as an abuse of the examination stage of the Local Plan (Part Two) to re-open a closed consultation.

## **7.0 Drafting Accuracy not Drafting Errors:**

7.1 Although the guidance on the establishment of a settlement boundary is relatively limited, there are a series of key themes that come through from various sources, these being as follows:

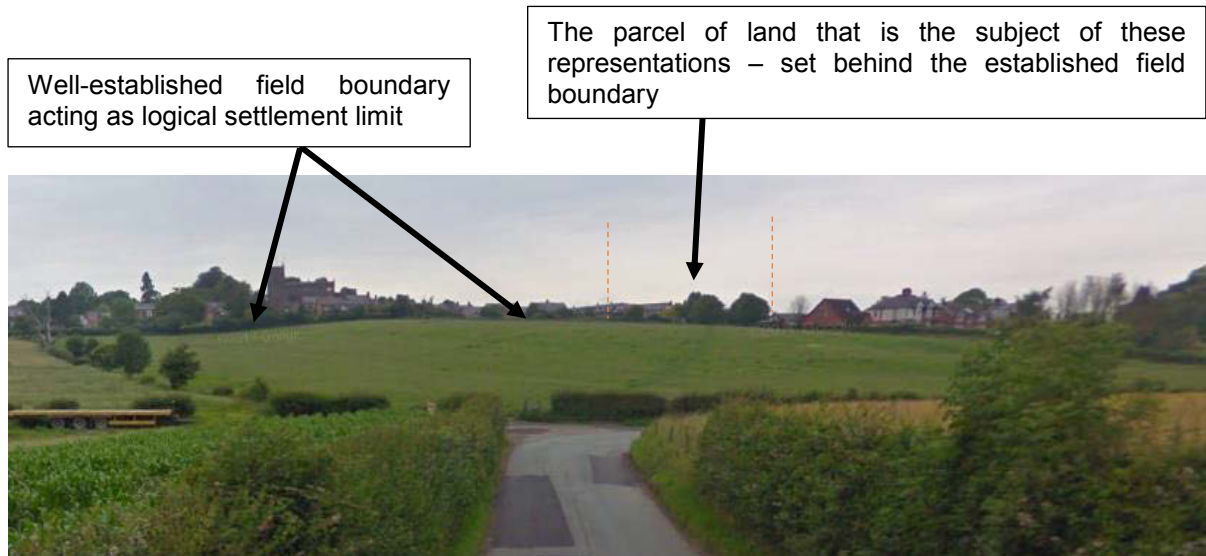
- Should follow a defined feature on the ground, e.g. field boundary.
- Should follow a logical settlement limit.
- Should exclude specifically designated sites, e.g. SSSI, SNCV, ANCV, AONB etc..
- Be consistent in approach, i.e. if domestic curtilages are included in one area this must follow for all properties.

**7.2 With specific reference to the land in Amendment 4, it is submitted that its inclusion in the settlement boundary complies with all of the above points.**

7.3 The Policies Map being put forward in the Local Plan Part 2 is the first iteration of a settlement boundary being established for Malpas. No boundary for Malpas was established in Chester District LP, therefore no 'starting point' to work from. NDP shows a 'Malpas village' on a plan but this simply identifies the 'built form' of the settlement and does not correspond with the proposed Policies Map.

7.4 The land in question is unique in respect of its land use within the wider context of the settlement – it is not agricultural land, nor a stand-alone paddock. The land is more akin to what historically has been referenced as 'white land'.

7.5 The land is not aligned to the property called The Sycamores – as referenced by the Council in their request. It is the landholding of a single residential property called Parbutts House. Parbutts House was established when the conversion and development of a former farm complex was granted planning permission in the late 1980's. Parbutts House forms of the wider complex know as Old Hall Court development undertaken in early 1990's (PP granted late 80's). A clear boundary fence delineating the domestic curtilages from the agricultural land (open countryside) to the west was established at that time and has been maintained ever since. This is highlighted through the following image:



**As viewed from Mastiff Lane to the south-west**

- 7.6 The land is not independently accessed (the only access is via Parbutts House).
- 7.7 The land is not defined as paddocks, the commonly accepted definition for which is a small enclosed field, often for grazing or training horses, usually near a house or stable. Since being established as domestic curtilage some 30-years ago it has not housed / grazed animals hence such a use reference is not applicable in this case.
- 7.8 **In summary, the curtilage boundary of Parbutts House follows the policy map as already submitted, it does not follow the proposed amended boundary, so it should not be re-drawn as proposed in the Amendment 4.**

## **8.0 Avoiding Planning Approval:**

- 8.1 A planning application has been made in good faith on the site that would be restricted by the boundary change proposed by Amendment 4 (and similarly for the site on Amendment 3). In the case of the Amendment 4 site:
- This is a small scale proposed development on a suitable and deliverable site.
  - The sustainability of the site is not in question; even the result of professional planning advice sought by an objector to the planning application did not challenge that.
  - The application seeks to bring forward three (or two) bungalows that would meet a local housing need.
  - Traffic and ecology studies were provided and have been accepted by the LPA.
- 8.2 The only credible explanation for the proposed exclusion of the land in Amendment 4 of Map Change 163 is that it would provide the LPA with an excuse to refuse the current planning application.
- 8.3 Such a redrafting of the policies map by the LPA at this very late stage in the examination of local plan part two in order to avoid a planning approval is wholly inappropriate and unjustified.

## 9.0 Conclusion:

9.1 This representation has demonstrated that the proposed Map change 163, Amendment 4, to restrict the settlement boundary at The Sycamores:

- a) Contravenes the correct procedure for development and adoption of Local Plan and the policies map.
- b) Is unnecessary for soundness of the plan, and actually adversely impacts the soundness of the plan.
- c) Reduces land available for development on a sustainable windfall site.
- d) Is in contradiction to the NPPF.
- e) Represents an abuse of the final Examination stage of the adoption of the Local Plan to retrospectively re-open consultation on that map.
- f) Cannot be a drafting correction as claimed by the LPA because the original boundary is the natural edge to the settlement and complies fully with guidance for the drawing of settlement boundaries.
- g) Is motivated by a desire to refuse a planning application submitted in good faith after publication of the policies map.

9.2 For the above reasons this representation **objects** to the proposed main modification policies map change – **Amendment 4** (Map Change 163) in respect of the Malpas settlement boundary that would result in excluding land at The Sycamores, Old Hall Street. That Amendment 4 is wholly unjustified, contravenes the relevant statutory regulations and process, and should not be taken forward.

## Appendix 1 – Policies Map Change



**Extract from Map Change 163 – Key Service Centre Malpas**  
**Document - SD2 Local Plan (Part Two) Submission Policies Map (March 2018)**  
*Delineation of settlement boundary supported by this representation*



**Extract from Map Change 163 – Amendment 4**  
**Document - Cheshire West and Chester Local Plan (Part Two) Amendments to**  
**the Policies Map Changes (December 2018)**  
*Delineation of settlement boundary not supported by this representation*

## **Appendix 2 – Housing permissions assessment**

CWaC Local Plan (Part One) adopted 29<sup>th</sup> January 2015.

Malpas, as a key service centre was designated the development of at least 200 houses

As can be seen from the list of consents granted below for Malpas since adoption of Part One, **257** of these units, **being those highlighted in red**, were granted outline planning permission prior to the adoption of part one.

### **Dwellings Minor 1-9 approved since January 2015**

<b>Date Approved</b>	<b>Address</b>	<b>Plan Ref.</b>	<b>No. new / additional Units</b>
11/02/15	Greenfields Chester Road Malpas SY14 8HT	14/04985/FUL	1
30/07/15	Demolition of existing dwelling & erection of 6 units The Cedars Old Hall Street Malpas Cheshire SY14 8NE	15/00750/OUT	5
25/08/15	Barn Conversion Land And Outbuilding The Hough Higher Wych Road Wigland Malpas	14/04062/FUL	1
08/09/15	Conversion - Land Opposite 1 Stockton Cottage Dog Lane Malpas Cheshire	15/02088/FUL	1
20/10/15	Land Adjacent Beeches Lodge Tilston Road Malpas	15/03126/FUL	1
06/01/16	Conversion Aladdins Cave Church Street Malpas SY14 8NX	15/04773/FUL	1
02/02/16	Barn conversion Hamilton House Chester Road Malpas Cheshire SY14 8JF	15/00616/FUL	1
24/05/16	Land Rear Of Holly House Old Hall Street Malpas Cheshire	16/00928/FUL	1
13/07/16	Land Off Greenfields Lane Malpas Cheshire	15/04750/FUL	7
20/10/16	Boogles Barn Tilston Road Overton Malpas Cheshire SY14 7DF	16/01179/FUL	6
27/01/18	Land Rear Of Old Police House Chester Road Malpas SY14 8HT	16/01766/FUL	1
<b>TOTAL NEW DWELLINGS</b>			<b>26</b>

### Dwellings Major 10+ approved since January 2015

Date Approved	Address	Plan Ref.	No. new / additional Units
05/11/15 Approved prior to adoption of Local Plan – outline app approved 07/03/14	Land Opposite West End Cottage Church Street Malpas Cheshire	15/02824/REM 13/03806/OUT	19
06/01/16 Approved prior to adoption of Local Plan -approved 30/01/14	West End Poultry Farm Hughes Lane Malpas Cheshire SY14 7DA	14/03299/REM 12/05430/OUT	60
07/03/16 Approved prior to adoption of Local Plan -approved 30/01/14	Land Rear Of Broselake Farm Greenway Lane Malpas Cheshire	15/03721/REM 13/01213/OUT	137
27/09/16 Was approved at Planning Committee 14/01/14 – S106 took 2-years+	Land Off Chester Road Malpas	13/03826/OUT	41
30/11/17	St Josephs College Tilston Road Malpas Cheshire SY14 7DD	16/04716/FUL	41
<b>TOTAL NEW DWELLINGS</b>			<b>298</b>
<b>OVERALL TOTALS</b>			<b>324</b>